

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6237 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MUSHTAK AHMED ISHTIAK AHMED PATHAN

Versus

STATE OF GUJARAT

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Appearance:

MR MH BAREJIA for Petitioner

SERVED for Respondent No. 1

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 02/12/96

ORAL JUDGEMENT

By way of this Special Civil Application the petitioner has challenged the order of detention dated 9.7.1996 passed by the Commissioner of Police, Ahmedabad. It appears from the grounds of detention that four cases have been registered against the petitioner for offences under the provisions of Indian Penal Code and under the Arms Act. Details of the said cases are given as under:

Sr. No.	Police Station	C.R.No.	Offence
1.	Navrangpura	CR.No.479/92	U/ss 120(b), 365, 368, 384 504 of IPC and 25(1) of the Arms Act.
2.	Vejalpur	" 158/92	25(1)(a) of the Arms Act
3.	Astodia	" 237/92	365, 384, 323, 506(2) and 25(1)(c) of the Arms Act
4.	Vejalpur	" 192/94	365, 384, 452, 506(2), 394, 323 and 25(1)(c) of the Arms Act.

All these cases are pending trial. In addition to the above said cases, there are statements of four witnesses. It appears that the case registered at Vejalpur i.e. 192/94 is with respect to crime alleged to have been committed in 1991. It also appears that the petitioner was in Sabarmati Central Prison during March, 1992 to February 1995.

2. It is contended by the learned Advocate that the order of contention is vitiated for the reason that the petitioner was not supplied with copy of the bail application and also copy of the order passed in CR.No.192/94. He further submits that the said orders were also not considered by the detaining authority. In support of this contention, the learned Advocate placed reliance on a decision in the case of Ahmedkutty v. Union of India, reported in 1990 (2) Scc. In para 27 of the judgment, the Apex Court while considering the said case, held that

"the bail application and the bail orders are vital materials for consideration. It is further held that if the said documents were not considered, satisfaction of the detaining authority itself would have been impaired and if those had been considered, they would be the

documents relied on by the detaining authority though not specifically mentioned in the annexure to the order of detention and those ought to have been part of the documents supplied to the detenu with the grounds of detention and without them the ground themselves could not be said to have been complete."

3. I have considered the contention of the learned Advocate. In my view, absence of supply of documents of bail application and the order of bail amounts to denial of the detenu's right to make an effective representation and that it resulted in violation of Article 22(5) of the Constitution of India rendering the continued detention of the detenu illegal and entitling the detenu to be set at liberty.

4. In view of the aforesaid, this Special Civil Application is allowed. The impugned order of detention dated 9.7.1996 is quashed and set aside. The detenu shall be released forthwith, if not required in any other case. Rule made absolute accordingly.

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